

4 Official Opinions of the Compliance Board Opinion 99 (2004)

NOTICE REQUIREMENTS – TIMING – NOTICE OF TUESDAY MEETING POSTED ON PRECEDING FRIDAY, PERMITTED BY ACT – TIMELY POSTING EXCUSES LATE NOTICE TO PRESS

October 22, 2004

*Kevin A. Slayton, Chairman
Parent and Community Advisory Board
Baltimore City Public School System*

The Open Meetings Compliance Board has considered your complaint, filed on behalf of the Parent and Community Advisory Board, alleging that the Baltimore City Board of School Commissioners violated the Open Meetings Act by failing to give proper notice in advance of a meeting held on August 10, 2004.

For the reasons explained below, we find that no violation occurred.

I

Complaint and Response

According to the complaint, the purpose of the August 10 meeting was to discuss and approve the final version of the school system's master plan. The complaint quoted a response from the school system's Public Relations Director, addressing the manner in which notice was provided: "Notice of the [Tuesday] August 10th school board meeting was posted on the board office door (room 406) and on the doors of the first floor board room. The *Baltimore Sun* was notified on Monday as well as Channel 11." Quoting §10-506(a) of the Act,¹ the complaint argued that providing notice less than 24 hours in advance of a meeting was not reasonable. Furthermore, the complaint argued that providing notice to a newspaper at a point when the paper would not have been able to publish the announcement until the day of the meeting was not reasonable. The complaint also noted that, due

¹ This provision states: "Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session." Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

to the topic of discussion and the statutory role of the Parent and Community Advisory Board, the Advisory Board and its constituents should have been properly advised of the meeting.

In a timely response on behalf of the School Commissioners, Allyson Huey, Associate Counsel in the school system's Office of Legal Counsel, elaborated on the background leading to the August 10 meeting. According to the School Commissioners' response, the meeting was called for the limited purpose of seeking the Commissioners' approval of the final revisions to the school system's Master Plan II and Financial Recovery Plan. Apparently, the State Board of Education had required changes to an earlier version of the plan and resubmission of a revised plan by August 16. School system staff had been working on the revision since June and completed their work on August 6. Although staff were aware of the August 16 deadline, the response noted that the uncertainty surrounding the actual completion date made advance scheduling of the School Commissioners' meeting impracticable.

According to the School Commissioners, on Friday, August 6, a decision was made that the document was ready for presentation to the School Commissioners and a meeting was scheduled for the evening of August 10. The written notices referred to in the complaint were apparently posted the same day – August 6. On Monday, August 9, the school system's communication director personally contacted the *Baltimore Sun* and the news department of WBAL Television.

The School Commissioners' response also indicated that it routinely includes on agendas for regularly scheduled meetings the manner in which notice of their meetings is posted. The response went on to argue that the Commissioners' actions in advance of the August 10 meeting satisfied the Act.

II

Discussion

A. Role of the Compliance Board

The complaint observed that, given the Parent and Community Advisory Board's role in school system matters, the Advisory Board and its constituents "should have been properly notified" of the August 10 meeting. Presumably, this comment relates to the Advisory Board's statutorily prescribed role under § 4-308 of the Education Article, Annotated Code of Maryland. This portion of the complaint suggests that the Education Article provision itself implies an obligation of direct notification to the Advisory Board, which was not done prior to the August 10 meeting.

The Compliance Board's jurisdiction is limited to considering alleged violations of the Open Meetings Act. *See, e.g., 3 Official Opinions of the Maryland Open Meetings Compliance Board* 143, 144 (2001) (Opinion 01-14).² Thus, we limit our discussion to the notice requirements under the Act.

B. Notice – Posting at school system's central office

The Open Meetings Act requires the Baltimore City Board of School Commissioners and all other public bodies to give "reasonable advance notice" of any meeting that is subject to the Act. §10-506(a). The Act affords public bodies considerable leeway in deciding how to provide notice. §10-506(c); *see 3 OMCB Opinions* 264, 266-67 (Opinion 03-4). One permissible method of providing notice, which was used by the School Commissioners, is "by posting ... notice at a convenient public location at or near the place of the session," provided that the public has been told that this method would be used. §10-506(c)(3); *4 OMCB Opinions* 88, 98 (2004). It is clear that the School Commissioners' practice satisfied this aspect of the Act.

In terms of the timing of notice, the "reasonable advance notice" standard, rather than any prescribed minimal period of notice, apparently reflects the Legislature's recognition that public bodies must occasionally meet urgently, outside their usual meeting pattern. *3 OMCB Opinions* 245, 250 (2002) (Opinion 02-15). We will not second-guess a public body's decision that it must meet on short notice, at least without evidence suggesting an improper motive. *4 OMCB Opinions* 51, 56 (2004). There is no such evidence here. To adhere to the State Board of Education's timetable, the School Commissioners needed to approve the plan before their next regular meeting. Moreover, their staff believed that a meeting could not feasibly be scheduled until a document was available to present.

Once the meeting was scheduled, the School Commissioners' obligation at that point was to give notice "as soon as [was] practicable" Office of the Attorney General, *Open Meetings Act Manual* 19 (5th ed. 2004). As we understand the facts, notice was posted the very day that the August 10 meeting was scheduled – two business days in advance of the Tuesday evening meeting. Hence, we find that the School Commissioners' posting of notice on Friday, August 6, in advance of the August 10 meeting, was reasonable, and thus satisfied the notice requirements of the Act.

² For brevity's sake, we shall henceforth refer to the volumes of our prior opinions as *OMCB Opinions*.

C. *Notice – Contacting the media*

Although we have concluded that the posting of notice in the manner described satisfied the Act's requirements, to provide additional guidance we shall address the complaint's further point that failure to notify the newspaper in advance of its publication deadline was itself a violation of the Act. This portion of the complaint in effect urges us to hold that notice to the news media must be timed so as to allow the recipient to serve as an intermediary for the notice, by in turn publishing the substance of it.

This argument would have merit if the school system had used § 10-506(c)(3), "delivery to the news media," as its *sole* method of notice. Then, the public body would in effect be relying on the recipient to convey the key information about the forthcoming meeting to the public. Delivery after the time when, as a practical matter, the recipient could do so would not be "reasonable advance notice."³

The situation is markedly different, however, when, as here, a public body uses *two* methods of notice, one aimed at the general public (through posting) and the other aimed at notifying the reporters who regularly cover the public body. Under these circumstances, as long as the posted notice is timely, the public's ability to find out about the meeting has been served. The later notice to the news media is intended, and properly so, to allow reporters to cover the meeting and, through subsequent reporting, inform interested members of the public (most of whom, of course, will not have attended the meeting) of anything deemed newsworthy. It is simply a side benefit if time and editorial decision making result in the news media's amplification, prior to the meeting, of the notice to the public.

³ We do not have occasion here to consider the circumstances under which the Act might be violated if delivery to the news media were indeed the sole method of notice. The overall legislative command that all aspects of the notice process must be "reasonable." § 10-506(a). Given that decisions about what appears in print or in a broadcast are made by editors, not the public body, is it reasonable for a public body to leave up to others' judgment whether notice to the public actually is given? Perhaps it is reasonable only if the public body has assurance that a notice to the news media will in fact appear in a timely listing of community events or the like. Under the facts here, however, we need not resolve this issue.

III

Conclusion

In our opinion, the manner in which notice was provided in advance of the Board of School Commissioners' meeting on August 10, 2004, satisfied the notice requirements of the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin
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*Chairman Walter Sondheim, Jr., did not participate in the preparation or approval of this opinion.